

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Betty Peterson,

Case No. 1:11-dp-21956

Plaintiff,

v.

ORDER

DePuy Orthopaedics, Inc., et al.,

Defendants.

Defendants filed a motion to dismiss this case because no new plaintiff had been substituted within 90 days after the filing of a Notice of Suggestion of Death on November 1, 2018. (Doc. No. 18). Plaintiff's counsel filed a response, acknowledging no motion for substitution had been filed. (Doc. No. 19). Counsel argues this failure was excusable because counsel had notified Defendants of the identity of the party to be substituted as Plaintiff – Charles C. Bailey, Ms. Peterson's son and the duly-appointed executor of her estate – in a timely manner. (Doc. No. 19 at 2). Plaintiff's counsel also provided Defendants with a supplemental Plaintiff Fact Sheet and an updated health information disclosure authorization. (*Id.*).

Rule 25(a) requires the dismissal of an action if a motion for substitution of a proper party is not made “within 90 days after service of a statement noting the death” Fed. R. Civ. P. 25(a)(1); *see also Ault v. Oberlin Coll.*, 620 F. App'x 395, 396 n.3 (6th Cir. 2015); *Fossyl v. Milligan*, 317 F. App'x 467, 469 n.1 (6th Cir. 2009). The Federal Rules of Civil Procedure, however, permit this

deadline to be extended for good cause, such as in cases of excusable neglect. *Dietrich v. Burrows*, 164 F.R.D. 220, 222 (N.D. Ohio 1995) (citing Fed. R. Civ. P. 6(b)).

Defendants do not assert they have suffered prejudice from the delay in the formal amendment of the pleadings, and none is evident from the status of this multidistrict litigation. Therefore, I deny Defendants' motion to dismiss, (Doc. No. 18), and grant the motion to substitute as the Plaintiff Charles C. Bailey, as Independent Executor of the Estate of Betty Peterson. (Doc. No. 20).

So Ordered.

s/ Jeffrey J. Helmick 5/13/20
United States District Judge